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August 29, 2014

Robert Berkman, President  
CEQA-NOW  
Post Office Box 368  
Newberry Springs, California 92365

Re: Public Records Act Request dated August 4, 2014, regarding  
County Planning Project P200900339

Dear Mr. Berkman,

Tom Hudson, the County's Director of Land Use Services ("LUSD"), has asked this office to respond to your letter dated August 4, 2014, addressed also to Ken Alex, Director of the Governor's Office of Planning and Research.

In your correspondence, you state that per the Public Records Act ("PRA"), you have made a number of previous requests for documents related to the above-referenced project, and that the County has been generally unresponsive to your requests. We disagree with this assertion and believe that you have previously been provided all nonprivileged documents that are responsive to your requests. Nevertheless, we provide the following information about the subject project and summarize the County's responses to day.

**Original Project**

The applicant for this project was Solutions for Utilities, which filed an application for a Conditional Use Permit ("CUP") to establish a solar photovoltaic power-generating facility ("Project") on a 27-acre portion of an 80-acre parcel, located at the northwest corner of Cottonwood Road and Mountain View Road in the unincorporated community of Newberry Springs. The site is designated RL (Rural Living). The solar photovoltaic panels were planned to be developed in two phases, each phase producing about 1.5 megawatts (MW) of electricity for a total of three MW.

Because the Project involved a CUP, it was required to be considered by the Planning Commission at a public hearing. This hearing was conducted on April 22, 2010, at which time the Planning Commission approved the Project. James and Ramona Doles filed a timely appeal to the Board of Supervisors ("Board").

The Board heard the appeal on July 13, 2010. Following presentations by County staff, the Doles, and Mary Hoffman (on behalf of the applicant), the Board heard testimony from Norman Diaz, E.T. Snell, John Coffey, Linda DeLuca, Wayne Snively, and Salvador Lopez. The Board voted unanimously to deny the appeal and approve the Project.

No judicial challenges to the County's approval were pursued.

### **Project Revision**

Shortly after receiving this approval, the Project was sold to Concentrix Solar Inc., the parent company to Newberry Solar 1, LLC. Newberry Solar 1, LLC was the applicant for a revision to the approved Project. The revision was to modify the photovoltaic technology to use less equipment, thereby resulting in a small Project footprint and less disturbance on the 27-acre portion of the 80-acre site. The technology change would also result in panels that, at full extension, would stand taller than those approved for the original Project. The Project, as revised, would be subject to the same Conditions of Approval and mitigation measures that were approved by the Board on July 13, 2010.

The County Development Code (Chapter 85.12) provides the procedures to be utilized when a Revision to an Approved Action is being evaluated. The Director of Land Use Services is authorized by the Code to act on the application but may refer the matter to the Planning Commission. Consistent with that authority, the application for the revision was approved on March 17, 2011, without reference to the Planning Commission. Among others, specific mailed notice of the determination was provided to the Doles, the parties who appealed the approval of the original Project. Appeal to the Planning Commission is permitted for a staff ruling on a revision, but no appeal was filed.

### **Documents**

Reviewing your requests for documents under the PRA and the County's responses results in the following chronology:

- On March 4, 2014, LUSD received your first PRA request.
- On March 6, 2014, LUSD sent an acknowledgement of receipt of your letter, stating that the requested information would be available for review within 30 days.
- On March 18, 2014, LUSD received a second letter from you that begins: "This is our amended Public Records Act request." County staff interpreted this to be an amendment of the request received on March 4, 2014, not a separate, additional request.
- On March 27, 2014, LUSD sent an acknowledgement of receipt of the second letter, stating that the request would be fulfilled within 30 days.

- On May 8 or 9, 2014, you telephoned staff to ask about the status of your request. Staff explained that the compilation had not been completed, apologized for the delay, and stated that the information would be provided as soon as possible.
- On May 12, 2014, LUSD sent you the records requested in the second letter.
- On May 15, 2014, you telephoned to advise that you had received the documents requested in the second request but not those in your first request. You followed up with a letter dated May 15, stating the same complaint, and later referred to by you as a third PRA request.
- On May 28, staff sent you the additional documents.
- On June 14, staff received a letter dated June 13 that restated your previous record requests and stated that you were not satisfied with previous responses.
- On August 4, staff received another letter, stating that no records were transmitted in response to the June 13 PRA request.
- On August 15, staff sent a reply letter, addressing questions in your June 13 and August 4 letters, with clarification of the records transmitted in response to all of your PRA requests.

Thus, you can see that the County is of the belief that you have been provided all the documents that you have requested, whether your first letter and second letters are considered together or separately.

We will also take this opportunity to advise you that the documents that were before the Board on July 13, 2010, remain accessible on line at the Clerk of the Board's website. These consist of 14 separate documents:

- Board Agenda Item (6 pages)
- District Zoning Map (1 page)
- Appeal (7 pages)
- Planning Commission Minutes, April 22, 2010 (7 pages)
- Conditions of Approval (19 pages)
- Findings (1 Page)
- Memorandum to Planning Commission from Staff (3 pages)
- Planning Commission Minutes, March 18, 2010 (5 pages)
- Site Plan (1 page)
- Solar Panel Exhibit (2 pages)
- Staff Report to the Planning Commission (6 pages)

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- Vicinity Map (3 pages)
- Aerial Map (5 pages)
- Assessor Parcel Map (1 page)

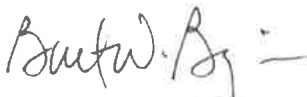
As an alternative to accessing these documents on line, we can copy and mail these to you at the County's rate for photocopying of ten cents per page, upon remittance in advance of \$6.70 (67 copies x \$.10 = \$6.70).

The approval documents for the revision are not available on line but consist of eight pages. Thus, the total cost if you would like these duplicated again is \$7.50. Please advise if you would like additional copies made and sent to you again.

Thank you for your interest in this matter.

Very truly yours,

JEAN-RENE BASLE  
County Counsel



BART W. BRIZZEE  
Principal Assistant County Counsel

BWB:agr  
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cc: Ken Alex, Director, Governor's Office of Planning and Research  
Tom Hudson, Director, LUSD  
Terri Rahhal, Planning Director  
Congressman Paul Cook, Attention: Mr. Dakota Higgens, Staff Assistant  
Robert Hingtgen, Project Manager, San Diego County Department of Planning  
and Development  
Le Hayes, General Manager, Newberry Springs Community Services District  
Ted Stimpfel, Newberry Springs Community Alliance  
Dr. Gavin Erasmus  
Dr. Debra Hughson  
Jean-Rene Basle, County Counsel  
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Yvonne Johnson, San Bernardino County Office of Compliance and Ethics  
Michael A. Ramos, District Attorney, San Bernardino County  
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